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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,497	08/03/2001	Gregory M. Quist	01/171	7326

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Leon D Rosen
Freilich Hornbaker & Rosen
Suite 1220
10960 Wilshire Boulevard
Los Angeles, CA 90024

EXAMINER

NGUYEN, TU T

ART UNIT PAPER NUMBER

2877

DATE MAILED: 02/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/922,497

Applicant(s)

QUIST ET AL.

Examiner

Tu T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15, 16 and 36-40 is/are pending in the application.
- 4a) Of the above claim(s) 38-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16 is/are rejected.
- 7) ☒ Claim(s) 15, 36 and 37 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

Claims 15-16,36-37 are objected to because of the following informalities:

Claims 15-16, 36-37, line 1, "A method for the identification" should be changed to "A method for identification".

Drawings

The figure 2H is missing. Applicant is required to submit a drawing contain figure 2H.

Specification

The disclosure is objected to because of the following informalities:

Specification, page 5, lines 4, 11, 22, 24, 26, "Figure 2" should be changed to "Figure 2A".

Election/Restrictions

Newly submitted claims 38-40 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the original claims (15,36-37) discloses a method for identification of unknown particles by comparing the measured data to a previously identified data, wherein the previously identified data are obtained from an algorithm to a mathematical technique. However, the new set claims 38-40 are directed to a method for identification of unknown particles by comparing the

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detected scattering vectors to a multiple evenvectors of a known species, wherein only light that is detected within an angle that is no more than about 2.5 degree.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 38-40 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klein (6,315,955).

With respect to claim 16, Klein discloses a method for identifying particles in fluid. The method comprises: providing at least one detector means and a radiation source (abstract), detecting the scattering light (column 2, lines 40-50), identifying the particle by comparing the detected light with a known data (abstract).

Klein does not explicitly disclose the radiation scattering pattern as claimed. However, it would have been obvious that Klein's known data could be any types such as a scattering pattern.

Allowable Subject Matter

The following is a statement of reasons for the indication of allowable subject matter:

Prior arts of record does not disclose a method for identification of unknown particles contained in a fluid. The method comprises: comparing the measured radiation scattered by an unknown particle with standard results previously obtained from a previous identified particle, wherein the data obtained from an algorithm to a mathematical technique as claimed in claims 15,36,37.

Response to Arguments

Applicant's arguments filed 11/24/2003 have been fully considered but they are not persuasive. Since Applicant did not make any argument for claim 16, refer to discussion above for the rejected claim 16.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tu T. Nguyen whose telephone number is (571) 272-2424. The examiner can normally be reached on T-F 7:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G Font can be reached on (571) 272-2415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tu T. Nguyen
Primary Examiner
Art Unit 2877

02/17/2004